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No. 81-746
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1981

No. 81-746

CITY OF AKRON

v.

AKRON CENTER FOR REPRODUCTIVE HEALTH

No. 81-1172
AKRON CENTER FOR REPRODUCTIVE HEALTH

v.

CITY OF AKRON

PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

AMICUS CURIAE BRIEF BY THE LEGAL DEFENSE FUND FOR UNBORN CHILDREN

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In The
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October Term 1981

No. 81-746

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AKRON CENTER FOR REPRODUCTIVE HEALTH

v.

CITY OF AKRON

AMICUS CURIAE BRIEF BY THE LEGAL DEFENSE FUND FOR UNBORN CHILDREN IN SUPPORT OF THE CITY OF AKRON

Interest of Amicus Curiae

The Legal Defense Fund For Unborn Children is an organization whose purpose is to protect the constitutional rights of children unborn and born alive. The parties have not done this. The amicus submits facts, authorities, and arguments, not submitted by the parties, which dispose of all the issues raised by the parties.

Summary of Argument

Roe v Wade, 410 U.S. 113, is a mistake of law. It is no law at all.

In Roe v Wade, the U.S. Supreme Court Hitler-like asserted to legalize killings which had been defined as murder since long before the adoption of the Fourteenth Amendment.

Moreover, the Court's conclusion in Roe v. Wade, "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," is based on a fatal reversal of the burdens of proof and persuasion, and indispensable parts of the Court's evidence are fabricated and false.

The U.S. Supreme Court has already admitted that Roe v Wade is a mistake of law, and this is the legal equivalent of the express overruling of Roe v Wade. Roe v Wade should now be expressly overruled to reflect the true status of the law.

ARGUMENT

ROE v WADE IS NO LAW AT ALL, SINCE THE COURT HITLER-LIKE ASSERTED TO LEGALIZE KILLINGS DEFINED AS MURDER SINCE LONG BEFORE THE ADOPTION OF THE FOURTEENTH AMENDMENT

Counsel presents new evidence herein,[1/] not presented by the parties, to show that many of the killings that the Supreme Court asser-

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1./ The new evidence was published in The Washington Post on September 12, 1979, under the caption "WASHINGTON LAWYER CHARGES U.S. SUPREME COURT WITH MASS MURDER," as set out below. That the charging evidence can be published in the dominant newspaper in the nation's capital, but, as the victims are being killed, the evidence can not even be heard in this Court, proves the complete criminal degeneracy of the judicial system. The newly discovered evidence shows the Court asserted to legalize killings defined as murder since before the adoption of the 14th Amendment.

SUMMARY OF ARGUMENT

MANY ROE v WADE KILLINGS ARE MURDER

The evidence shows that many of the killings permitted by Roe v Wade, 410 US 113(1973) were murder in 1868. Since the killings were murder in 1868, then absent a constitutional amendment, the killings are still murder, and Roe v Wade is not law at all.

ARGUMENT

1. Introduction to Evidence

The evidence presented herein shows that, at the time the Fourteenth Amendment was adopted in 1868, the unlawful killing, with malice aforethought, of a child born alive was murder. Killings of children born alive were not treated as a special category, as was abortion.

It is thus absolutely indispensable to examine what "born alive" meant in 1868. It is obvious that, if the life of a child born alive was protected by

ted to legalize in Roe v Wade, 410 US 113, had thereto been defined as murder. It is just as if the Court asserted a right to kill Jews. Obviously, absent a constitutional amendment, these killings are still murder. Justices who have presumed to permit these killings may now be facing the death penalty in very many states.

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the murder laws in 1868, then it is a person within the language and meaning of the Fourteenth Amendment.

The evidence shows that in 1868, born alive did not mean natural birth after nine full months of gestation; nor did it mean birth after viability, "that is, potentially able to live outside the mother's womb, albeit with artificial aid." Roe v Wade, 410 US at 160. If abortion resulted in a live but unviable child that died as a consequence of its not being able to survive outside the womb, it was murder and punishable by the death penalty.

The evidence shows that the hysterotomy is a common method of performing abortions under Roe v Wade. This is essentially a Caesarean in which a live but unviable child is removed from the womb and left to die. The legal authorities show that in 1868, such a killing was murder, and punishable by the death sentence.

In summary, what was murder in 1868, can not now be decreed a constitutional right. Without an amendment to the Constitution, the killings must still be murder, and the Justices who permitted these killings may be guilty of mass murder in the first degree. This is still punishable by the death sentence in many states.

Many people would no doubt be astonished to learn that the case presented herein for the unborn is the very case they would have to present for themselves if their right to life were challenged. For example, take almost any group of persons, such as the insane, invalids, Jews or Catholics. Suppose it were claimed in federal court that the

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2. The English Law

The English law, as reflected in the writings of Coke(3 Inst. 50), Hawkins(1 Hawkins Ch. 13, s. 16) and Blackstone(4 Bl. Com. 198) defined the felonious killing of a child "born alive" as murder, even if the child received the fatal wound in the womb.

These authorities were followed by the English courts in permitting prosecutions of the killings of children born alive as murder. Rex v Senior, 1 Moody CC 346 (1832); Reg. v Trilloe, 174 Eng. Rep. 674 (1842); Reg. v West, 2 C & K 784 (1848).

Most critically, in the English law, a child did not have to be viable to be born alive. In 1848, the leading case of Regina v West, 2 C & K 784, was decided. The indictment for murder alleged that the defendant had inserted a "certain pin" "upward into the womb " of a pregnant woman for the purpose of producing the abortion of a "quick" child; and that this resulted in the child being "prematurely born and brought forth alive from and out of the womb." Id., 784-85. The child died shortly thereafter. A "medical witness" had testified that:

"(I)t was a healthy child; but that, being born at that period of gestation, it was impossible that it could live any considerable length of time separated from the womb of the mother. It was incapable

right of "privacy" announced in Roe v Wade includes the right to kill members of these groups, as well as the unborn. If the burden were suddenly thrust on these groups, as it was thrust on the unborn, to prove that they are persons whose lives are protected by the Fourteenth Amendment, what factual, non-argumentative evidence could they find to estab-

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of maintaining a separate and independent existence." Id., at 786.

The judge, relying on Coke and Blackstone, instructed the jury:

"The prisoner is charged with murder; and the means stated are, that the prisoner caused the premature delivery of the witness, Hensen, by using some instrument for the purpose of procuring abortion; and that the child so prematurely born was, in consequence of its premature birth, so weak that it died. .... I am of opinion(and I direct you in point of law), that if a person intending to procure abortion does an act which causes a child to be born so much earlier than the natural time, that it is born in a state much less capable of living, and afterwards dies in consequence of its exposure to the external world, the person who by her misconduct so brings the child into the world, and puts it thereby in a situation in which it cannot live, is guilty of murder." Id., at 788.

The case of Regina v West, supra, was presented by the leading English writers as the correct statement of the law of murder. See, e.g., 1 J.F. Archbold, A Complete Treatise on Criminal Procedure, Pleading and Evidence 783 (Waterman Am. ed. 7th ed. 1860); 1 W.O. Russell, A Treatise on Crimes and Misdemeanors 671-672 (4th ed. 1865); A.S. Taylor, A

lish their right to life?

As the case of the unborn shows, it would do no good to object that no one ever heard of such a constitutional right to kill, or to object that such killings had thereto been defined as criminal. And the Fourteenth Amendment merely states that it pro-

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Manual of Medical Jurisprudence 516(Penrose Am. ed. 6th ed. 1866). Consequently, the abortion of a quick but unviable child that resulted in the child being born alive so prematurely that its death was caused by its inability to survive outside the womb, was murder.

3. The American Law Of Murder in 1868.

The English common law of murder of children born alive is significant since American courts used the English common law to construe their murder statutes. Clarke v State, 117 Ala. 1(1898); Hamilton v United States, 26 App. D.C. 382(1905).

American courts cited Coke, Hawkins, Blackstone, and the English court decisions, as authoritative definitions on the law of homicide of children born alive. See, e.g., Clarke v. State, 117 Ala. 1(1898); State v Winthrop, 43 Iowa 519(1876). By 1868, leading American legal authorities had specifically cited Regina v West, supra, as the correct law of murder of a child born alive. (As already noted, that case held that if a criminal abortion resulted in the premature delivery of a quick but unviable child that died after delivery as a consequence of its being so prematurely delivered that it could not survive outside the womb, it was murder.) See, e.g., F. Wharton, A Treatise on the Law of Homicide in the United States 96-97(1855). By 1868, this appears to be the uncontradicted view.

tects life of "any person." So, as with the unborn, the Amendment does not expressly refer to the insane, or invalids, or Jews, or Catholics; and its legislative history does not appear to specifically refer to any of these groups. As with the unborn, the murder laws do not expressly refer to the insane,

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Consequently, the evidence shows that the life of a quick but unviable child born alive was protected by the murder laws in 1868.

4. The Law Of Murder In 1868 And The Fourteenth Amendment

Since the evidence shows that the life of a quick but unviable child was protected by the murder laws in 1868, the evidence likewise establishes that the child so born alive is a person within the language and meaning of the Fourteenth Amendment.

By seizing upon viability, Roe v Wade permits the killings of quick but unviable children born alive. The Supreme Court presumed to decree the killings of these children to be a constitutional right without any examination whatever to see if these children were persons within the language and meaning of the Fourteenth Amendment. It is a naked decree without any investigation into the law of murder of children born alive.

This raises the question,- Does the Supreme Court have the Hitler-like power to decree murder to be a constitutional right? If invalids were protected by the murder laws in 1868, can the Supreme Court, without evidence or investigation, decree a constitutional right to kill invalids? If Jews were protected by the murder laws in 1868, can the Supreme Court decree, without evidence or investigation, a constitutional

or invalids, or Jews, or Catholics; and their legislative histories, to the extent they have any, do not appear to specifically refer to any of these groups. The principle in the Declaration of Independence, that all people are "created" equal and endowed with an unalienable right to "life," having been

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right to kill Jews? If newspaper editors were protected by the murder laws in 1868, can the Supreme Court, without evidence or investigation, decree a constitutional right to kill newspaper editors?

No doubt the Supreme Court bears the burden of proving, by evidence so conclusive that it will not admit of a rational doubt, that it possesses the power to decree murder to be a constitutional right.

5. The Hysterotomy Abortion Under Roe v Wade

A common way to perform abortions under Roe v Wade is by hysterotomy. See, Commonwealth v. Edelin, 359 NE 2d 4(Mass. 1976). A hysterotomy is essentially a Caesarean, in which a live but unviable child is removed from the womb and left to die. 1 Hearings Before the Subcommittee On Civil And Constitutional Rights Of the Committee of the Judiciary, House of Representatives On Proposed Constitutional Amendments on Abortion 397 (94th Cong., 2nd Sess. 1976).

As established by medical testimony during the 1976 House Abortion Hearings, "With few exceptions, babies aborted by this method will all move, will all breathe, and some will cry .... Almost all were born alive." Id., at 397.

Consequently, by definition, in 1868, these hysterotomy abortions could have been prosecuted as murder.

sneered out of court in the unborn's case, now provides no assurance for anyone. So what factual, non-argumentative evidence is there for members of these groups to protect themselves from extermination?

The case presented herein for the unborn,

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6. Roe v Wade and Mistake of Law

The Supreme Court itself has recognized that constitutional provisions against ex post facto laws do not apply to judicial decisions that are a mistake of law. Ross v Oregon, 227 US 150(1913). Consequently, if Roe v Wade is a mistake of law, then mass murder is being perpetrated in America. The Roe v Wade hysterotomy killings, by definition under the common law, and thus constitutional law, violate the positive criminal murder statutes throughout the United States.

The killings of children born alive have been prosecuted as murder in the first degree, Comm. v Harmon, 4 Barr. 269 (Pa. 1846)(child thrown in creek); or murder in the second degree, Clarke v State, 117 Ala. 1 (1898)(wife beaten, child die from injuries); or manslaughter, People v Chavez, 77 Cal. App. 2d 621(1947)(child neglected),- according to the facts of the particular case, as in any other homicide.

In connection with these judicial killings, it is relevant to note that the Supreme Court decreed murder to be a constitutional right without any examination whatever of the law of murder of children born alive. And as Abraham Lincoln noted, "(I)t is an established maxim in morals that he who makes an assertion without knowing whether it is true or false, is guilty of falsehood; and the accidental truth of the assertion, does not justify or excuse him." 1 The Collected Works of Abraham Lincoln 384 (Basler ed. 1953). Since Lincoln's day, this "maxim in morals"

supra note 1, is thus the case for everyone else. The common law is the dictionary; it has traditionally been used to define the terms of the homicide statutes. It is this same body of factual evidence upon which all groups must ultimately rely to establish

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has also been a textbook definition of perjury. See, 3 Wharton's Criminal Law and Procedure, § 1308, p. 673 (12th ed. 1957).

Consequently, rational people are entitled to believe, and a jury may be permitted to find, that the process by which the Supreme Court decreed murder to be a constitutional right is perjury or criminal fraud. It seems reasonable that such judicial killings, after such prolonged deliberation and adherence, could be prosecuted as murder in the first degree. Many states still punish mass murder in the first degree with the death sentence.

It may be that the judges responsible for the judicial killings did not believe that they were breaking the law. But, as Justice Oliver Wendell Holmes once wrote, "Ignorance of the law is no excuse for breaking it." "It is no doubt true that there are many cases in which the criminal could not have known that he was breaking the law, but ... the lawmaker has determined to make men know and obey." Holmes, The Common Law 41 (Howe ed. paperback 1963).

It now full well appears that the Justices of the Supreme Court of the United States have presumed to decree murder to be a constitutional right, without any evidence or examination whatsoever, with the death penalty the possible consequence of their decision being a mistake of law.

It now appears that, unless the Supreme Court can prove by evidence, beyond a doubt based on reason, that it has the Hitler-like power to decree mass

their right to life. The evidence, supra n.1, conclusively proves that the Supreme Court has Hitler-like, that is, by naked decree without any investigation of the law of murder, asserted to legalize mass murder. Roe v Wade is a mistake of law, that is, no law at all. All the countless thousands of

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murder to be a constitutional right, then Roe v Wade is just such a mistake of law.

CONCLUSION

Is government of laws founded upon evidence, or the mere naked decrees of men holding office for life?

The evidence proffered herein would appear sufficient to permit reasonable people to conclude beyond a reasonable doubt that the Supreme Court of the United States has committed mass murder in the first degree. The evidence would appear sufficient for reasonable people to conclude that, upon a scale never seen before in the peacetime history of the world, "The dagger of the assassin was concealed beneath the robe of the jurist." The Justice Case, 3 Trials of War Criminals Before the Nuernberg Military Tribunals 985 (GPO 1951).

If the United States were being ruled over by a Tribunal of Murderers, holding office for life, nakedly decreeing mass murder to be a constitutional right, in open defiance of the evidence, and presuming to be blindly obeyed by all courts, executives, legislatures, and people whatever without question, regardless of the evidence, then surely it would be the most astounding event in the legal history of the human race.

of Roe v Wade "born alive" killings since 1973 can be prosecuted as murder. The Court can look in the face of one of the victims it has killed. 2/

The evidence shows that the United States is being ruled over by a tribunal of murderers, which has Hitler-like asserted to legalize mass murder, and maintains the killings by refusing to allow truth to work in Court. But even the U.S. Supreme Court is not above the law of murder. The Justices responsible for these killings may be facing the death penalty in very many states.

Even a party, who argues in court that the killings can continue without question, can be prosecuted for murder. 3/

2./ Appendix A-1, infra. This was a second stage abortion induced by prostaglandin. Such abortions not uncommonly result in the child being born alive. Floyd v. Anders, 440 F. Supp 535, 538(1977).

The common methods of second stage abortions-hysterotomy, prostaglandin, and even salt poisoning-can result in children being born alive. Jeffries and Edmonds, Abortion: The Dreaded Complication, The Philadelphia Inquirer, August 2, 1981.

3./ Infra pages 27-32.

II.

ROE v WADE IS BASED ON FALSE EVIDENCE, AND THE VICTIMS ARE BEING EXTERMINATED IN VIOLATION OF THE U.S. CONSTITUTION.

The evidence, summarized below, proves that the Court's conclusion in Roe v Wade, 410 U.S. 113, 158, "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," is based on a fatal reversal of the burdens of proof and persuasion, and indispensable parts of the Court's evidence are fabricated and false. The evidence establishes, beyond the legal power of any federal judge to deny, that the unborn are persons whose lives are protected by the Fourteenth Amendment, as follows:

A.

Even the Court admitted in Roe v Wade, 410 U.S. at 156-157, that if the unborn were "a 'person' within the language and meaning of the Fourteenth Amendment," then the case for a constitutional right to kill the unborn, as claimed in Roe v Wade, "of course collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment."

B.

The terms of the Fourteenth Amendment ("nor shall any state deprive any person of life ... without due process of law")(emphasis added) are "universal in their application." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). The words "any person" admit of no exceptions whatever. Thus, on their face, the words "any person" include the unborn, as everyone else.

C.

The holdings of Chief Justice Marshall show that the Supreme Court had no lawful power to construe an exception to express, universal terms (such as "any person") unless the Court can show that "the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."[1/] And the Court must further prove that "had this particular case been suggested " to the framers, "the language would have been so varied as to exclude it."[2/]

1./ Sturges v Crowninshield, 4 Wheat. 122,202-3.
2./ Dartmouth College v Woodward, 4 Wheat.518,644-5.

Chief Justice Marshall founded the universality of the Supreme Court's jurisdiction on these very rules. 3/

The Court thus bore a very extraordinary evidentiary burden before it could create an exception to the universal terms "any person" so that victims could be killed in violation of positive criminal statutes. 4/

3./ Cohen v Virginia, 6 Wheat. 264, 378-380.

4./ The truth of this extraordinary evidentiary burden can be demonstrated by applying it to various cases. Before the Court could create an exception to the universal terms "any person" so that Jews, or Catholics, or the insane, could be killed like the unborn, the Court would have to demonstrate that "the absurdity and injustice of applying the provision [the terms- "any person"] to the case [the case of - Jews, Catholics, or the insane],would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application." Sturges v. Crowninshield, supra. And the Court must prove that if the case of the Jew, Catholic, or the insane had been suggested to the framers of the Fourteenth Amendment, then "the language would have been so varied, as to exclude it." Dartmouth College v. Woodward, supra. The framers would have changed the words of the Amendment to read that "No state shall deprive any person, except Jews, Catholics or the insane, of life ... without due process of law."

These same extraordinary evidentiary burdens must universally apply to all groups whose personhood may be challenged, including the unborn. Thus the Court bore the heaviest evidentiary burden possible in constitutional interpretation in order to create an exception to the universal terms "any person" so the unborn could be killed for any reason, or no reason, in violation of positive criminal statutes.

D.

The Supreme Court presented false evidence in Roe v Wade to support its conclusion that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Roe v Wade, 410 U.S. at 158. And, but for the false evidence, there is not even a credible foundation, much less a compelling one, for denying the protection of the express, universal terms "any person" to the life of the unborn.5/

5./Summary of False Evidence:

In introduction, at the time the Fourteenth Amendment was adopted in 1868, most states had already enacted positive statutes that made abortion a crime unless it were necessary to save the life of the mother. Within a few years, these criminal abortion statutes were virtually universal.

Consequently, any theory of a constitutional right to abortion on demand faced an impossible contradiction: How is it possible that the people who adopted the Fourteenth Amendment had enacted positive criminal statutes to protect unborn life, but, at the same time, without a single word of explanation, intended to imply an exception to the express, universal terms that not "any person" can be deprived of life without due process of law, and to create a constitutional right to kill the unborn?

To resolve that fatal contradiction, the Court asserted the hypothesis that when the criminal abortion statutes were first enacted, the laws were not intended to protect unborn life, but rather were

only intended to protect the mother. This hypothesis was falsely fabricated and used as follows:

A.

The Supreme Court first asserted, "When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman." Roe v Wade, 410 U.S. at 148. This was asserted as fact.

The only authority cited by the Supreme Court to prove this assertion of fact was a 20th century medical history book, Haagensen and Lloyd, A Hundred Years of Medicine 19 (1943), cited in Roe v Wade, supra, at 148n.43. But this book merely described the hazards of major surgery in general prior to Lister's discovery of antiseptics. The reference did not even mention the abortion operation.

However, the 19th century obstetric authorities throughout the Western world prove the Court's assertion of fact to be false. These 19th century obstetric authorities, based upon their own experience in performing abortions, and from hundreds of cases reported from around the world, declared in their obstetric textbooks that the abortion operation, the operation of artificially evacuating the fetus from the womb, was "perfectly safe" to the mother, 2 T. Denman, M.D., An Introduction to the Practice of Midwifery 96 (1802)(English physician); or "experience has proved that the dangers of the operation are reduced to a small matter," A.L.M. Velpeau, M.D., A Complete Treatise on Midwifery 530 (4th Am. ed. 1852)(French physician); or "to the mother there is very little danger." H.L. Hodge, M.D., The Principles and Practice of Obstetrics 293 (1864)(American physician). In short, the 19th century obstetric authorities prove the Supreme Court's assertion of fact to be false.

of proof and persuasion, as set out in the holdings of Chief Justice John Marshall. See page 15 , supra. Instead of the burden of

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The Supreme Court never revealed the "hazardous" abortion "procedure" to which it was referring. Actually, the 19th century physicians used the ancient method: "the membranes of the ovum are punctured," which permitted "the discharge of the waters," which induced the "action of the uterus" to "come on," which resulted in the expulsion of the fetus from the womb. 2 Denman, supra, 99. One 19th century physician traced this operation back almost 2000 years. F. Ramsbotham, M.D., The Principles and Practice of Obstetric Medicine 724 (4th ed. 1856).

Consequently, the 19th century physicians were using an ancient abortion operation which they described as not hazardous to the woman. The Supreme Court did not examine even one 19th century obstetric textbook. And the medical textbooks prove its assertion of fact, "When most criminal laws were first enacted, the procedure was a hazardous one for the woman," to be false.

B.

The Supreme Court next asserted, "Abortion mortality was high." Roe v Wade, 410 U.S. at 149. This is asserted as fact.

The Supreme Court asserted "Abortion mortality was high," without any authority to support it. It was a naked assertion. The 19th century obstetric authorities also prove this assertion of fact to be false. The medical authorities, supra, expressly asserted that the abortion operation was not deemed to be hazardous to the mother.

Consequently, the Court's assertion that "Abortion mortality was high" is false.

C.

Upon the two false assertions of fact, the Court falsely infers that"a State's real concern in enacting a criminal abortion law was to protect the

proving that including the unborn within the terms "any person" would "be so monstrous, that all mankind would, without hesitation, unite in rejecting the application," the

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pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy." Roe v Wade, 410 U.S. at 149. Thus a false inference was drawn from false facts.

D.

From the false inference that the criminal abortion laws were not intended to protect the lives of the unborn, the Court falsely inferred that, likewise, the framers of the Fourteenth Amendment did not intend it to protect the lives of the unborn, "that the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Roe v Wade, 410 U.S. at 158. This false conclusion is drawn from a false inference which is drawn from false facts.

Moreover, as independent corroboration of the purpose of the criminal abortion statutes to protect the unborn, 19th century authorities in criminal law, e.g., 2 Archbold, Archbold's Criminal Procedure, Pleading and Evidence 295 (6th ed. 1853); medical jurisprudence, e.g., F. Wharton and M. Stille, M.D., A Treatise on Medical Jurisprudence 339, 927(2d ed. 1860); medicine, e.g., 12 Transactions of the American Medical Association 27-28(1860); as well as state supreme courts, e.g., State v Moore, 25 Iowa 128, 131, 135-36(1868), leave no doubt that these 19th century abortion laws were intended to protect the lives of the unborn. Consequently there is no other body of evidence to come to the Court's rescue.

CONCLUSION

The Supreme Court bore the burden of demonstrating, beyond a doubt based on reason, that the absurdity and injustice of including the unborn within the

U.S. Supreme Court fatally reversed the burden. The Court placed the burden on the unborn to prove with "assurance" (that is, to make certain and put beyond doubt) that they were persons within the terms "any person," or the unborn would be excluded from the terms "any person." Rather the burden was on the Supreme Court to prove

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terms "any person" would be "so monstrous, that all mankind would, without hesitation, unite in rejecting the application," Sturges v Crowninshield, supra. And the Court had to prove to a demonstration that if the case of the unborn had been presented to the framers and adopters of the Fourteenth Amendment, "the language would have been so varied as to exclude it." Dartmouth College v Woodward, supra.

But, the Supreme Court did not cite even one single 19th century authority that expressly agreed with its conclusion that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn," much less one that asserted that there was a constitutional right to kill the unborn, as set out in Roe v Wade. And the court's assertion that the 19th century abortion laws were not intended to protect the lives of the unborn is shown to rest on false evidence.

The legal history demonstrates that the people who framed and adopted the Fourteenth Amendment not only intended it to protect the lives of the unborn, but these people had already enacted criminal abortion laws to do so in fact. This case for the unborn is absolutely conclusive. The terms "any person" must include the unborn.

with "assurance" that the unborn were not included within the terms "any person" or they would be included.[6/] And the evidence for the unborn is far stronger than that for many groups which the Court has judicially recognized to be included within the uni-

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6./ The Court illegally switched the burdens of proof and persuasion in the following manner. The Court first decreed a constitutional right to kill the unborn. Roe v Wade, 410 U.S. at 153. Incredibly, subsequently, the Court examined the question of the personhood of the unborn under the Fourteenth Amendment. Thus, in accordance with its compelling state interest test, once the constitutional right to kill the unborn was established, the burden was on the unborn to demonstrate the compelling justification of the criminal abortion statutes; that is, the burden was on the unborn to affirmatively prove that they were persons within the meaning of the terms "any person" in the Fourteenth Amendment- or be excluded.

Moreover, the objections which the Court raised to defeat the personhood of the unborn in Roe v Wade, 410 U.S. at 156-158 were either false, or irrelevant. This evidence will be submitted to the Court on request. The Court exactly perceived its function as that of a criminal defense lawyer who only has to raise doubts about the prosecution case to win. But the Court cannot exclude anyone from the protection of the words "any person" by merely working up quibbles or "inconsistencies." Roe v Wade, supra, 158 n.54.

Could the Court first decree a constitutional right to kill Jews? And then place the burden on the Jews to affirmatively prove that they are included within the terms "any person"? And then, by quibbling with the Jews' evidence, decide the Jews were not included within the terms "any person" so they could be hauled off to the graveyard?

versal terms "any person." 7/

The Supreme Court has exactly defied the express words "any person" in the Constitution, and their spirit, 8/ as well as the plain intention of the framers, 9/ and condemned to death those victims whom the Constitution endeavors to preserve.

7./ The Court was so certain that "corporations" were included within the terms "any person" that it forbade any oral argument to the contrary. Santa Clara v. So. Pac. RR, 118 U.S. 394,396. And the Court held that "strangers and aliens" were included within the terms "any person" by merely observing: "These terms are universal in their application." Yick Wo v Hopkins, supra, at 369.

8./ The uncontradicted scientific evidence in Roe v Wade showed that the unborn child "is alive," that the fetal heartbeat begins "pulsations at 24 days," and "brain waves have been noted at 43 days."

The Court itself has recognized that, while the Declaration of Independence is not law in itself, yet it is "the thought and the spirit, and it is always safe to read the letter of the Constitution in the spirit of the Declaration of Independence." Gulf, Colo. & S.Fe v Ellis, 165 U.S. 150, 159-160.

The undisputed scientific evidence proves that the unborn child has been "created" and thus endowed with an "unalienable" right to "life," and within the spirit of the terms "any person." The Court would amend the Declaration to read that "all men are created equal-except those created to die for the convenience of others."

9./ The evidence, supra n.5, shows that the adopters of the 14th Amendment not only intended the lives of the unborn to be protected by the terms "any person," but they had already enacted criminal abortion statutes to do so in fact.

III.

THE U.S. SUPREME COURT HAS WILLFULLY USED UNCONSTITUTIONAL PROCEDURES TO EFFECT AND MAINTAIN THE ROE v WADE KILLINGS.

The Supreme Court willfully used unconstitutional procedures to effect the Roe v. Wade killings.[1/]

And the Supreme Court has subsequently decided many abortion cases on the merits, but willfully used unconstitutional procedures to maintain the killings, as follows:

1. The Supreme Court willfully refuses to

1./ Counsel did not especially represent the unborn in the District Courts in Roe v Wade and Doe v Bolton. And the Supreme Court denied Bolton's request to allow counsel to represent the unborn in the Supreme Court. Thus, counsel did not represent the unborn at any stage of the original proceedings.

The question of the personhood of the unborn under the Fourteenth Amendment came up for the first time in the original proceedings after the cases reached the Supreme Court. Since no group had ever been excluded from the protection of the Fourteenth Amendment so they could be killed, the original parties had no notice of the kind of evidence, or the burdens of proof and persuasion the Court would deem determinative. The first time the parties understood this was when Roe v Wade issued, and the victims were condemned to death. But the Court had taken judicial notice of numerous facts and factors which the original parties had not seen, much less cross-examined in a judicial proceedings. An original party asked permission to cross-examine the Court's evidence. But the Supreme Court would not allow its evidence to be cross-examined.

allow retained(no cost to taxpayers)counsel to represent the victims being killed; [2]

2. The Supreme Court willfully refuses to allow the evidence in Roe v Wade, which it used to condemn the victims to death, to be cross-examined; [3]

3. The Supreme Court willfully refuses to allow evidence to be presented on behalf of the victims being killed to establish their right to life under the U.S. Constitution.[4]

The U.S. Supreme Court's own rulings on due process of law show these procedures to

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2./ Some of these cases are: Colautti v Franklin, 58 L Ed 2d 596, motion to allow counsel represent unborn denied 57 L Ed 2d 1131(1978); Anders v Floyd, 59 L Ed 2d 442, motion to allow counsel represent unborn denied 58 L Ed 2d 235(1978); Bellotti v Baird, 61 L Ed 2d 797, motion to allow counsel represent unborn denied 59 L Ed 2d 29(1979); Ashcroft v Freiman, 59 L Ed 2d 630, motion to allow counsel to represent unborn denied 59 L Ed 2d 630(1979); United States v. Zbaraz, 65 L Ed 2d 831, motion to allow counsel represent unborn denied 62 L Ed 2d 665-6(1980); Harris v. McRae, 65 L Ed 2d 784, motion to allow counsel represent unborn denied 63 L Ed 2d 775(1980); H.L. v. Matheson, 67 L Ed 2d 388, motion to allow counsel represent unborn denied 64 L Ed 2d 234 (1980).

3./ Supra Note 2.

4./ Supra Note 2.

to be unconstitutional[5/] and criminal.[6/]

5./ The U.S. Supreme Court has held that even in civil, non-judicial proceedings, where crucial deprivations are threatened, such as loss of welfare, due process guarantees (1) Notice; (2) the right to be heard and to present evidence; (3) the right to confront and cross-examine adverse evidence; (4) the right of representation by retained counsel; (5) the right of an independent decisionmaker; (6) the right to have a written statement by the decisionmaker of the evidence relied upon and the reasons for the determination. Goldberg v Kelly, 397 U.S. 254, 268-271(1970). In Re Gault, 387 U.S. 1(1967); Morrissey v. Brewer, 408 U.S. 471 (1972); Gagnon v Scarpelli, 411 U.S. 778 (1973); Viteck v Jones, 63 L Ed 2d 552 (1980). Since the unborn are being killed, there can be no question whatever that these elements of due process of law are guaranteed.

6./ The criminality of such process is evident. Could a judge use such procedures to legalize the killings of the insane, or Jews? These are effectively the same procedures cited by the Nuremberg Court in convicting the Nazi judges of criminal extermination. United States v Altstoetter(The Justice Case), 3 Trials of War Criminal Before the Nuernberg Military Tribunals 1046(1951).

Can it now be argued that a judge, who could not condemn even one Jew to death without counsel in a criminal case, could condemn all Jews in the United States to death without counsel by calling it a civil case and decreeing that the lives of Jews were not protected by the Constitution? A person cannot be deprived of life or liberty without due process of law, regardless of the description of the proceeding. The Constitution thus guarantees that any proceeding to determine if one is a person within the meaning of the Constitution must satisfy due process of law.

And any judge who willfully deprives any victims of constitutional rights under a guise of law can be criminally prosecuted. Imbler v. Pachtman, 424 U.S. 409 (1976).

IV.

THE U.S. SUPREME COURT HAS CONFESSED IN COURT TO GUILT OF CRIMINAL EXTERMINATION, INCLUDING MASS MURDER, AND THIS IS THE LEGAL EQUIVALENT OF THE EXPRESS OVERRULING OF ROE V WADE, 410 U.S. 113 (1973).

For the 76th time, the U.S. Supreme Court is accused in its own Court with criminally exterminating millions of lives in violation of the U.S. Constitution, and 18 U.S.C. 242.[1/]

For the 52nd time, the U.S. Supreme Court is accused in its own court with mass murder in violation of State and federal statutes.[2/]

For about the 56th time, the U.S. Supreme Court is accused in its own Court with willfully using unconstitutional, criminal procedures to maintain the Roe v Wade killings.[3/]

But, year after year, the U.S. Supreme Court has not denied the charges, much less attempted to prove the charges to be false. Under this Court's own rulings, this silence year after year in the face of accusation, while the victims are being killed, amounts

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1./ Charges based on evidence, supra page 14.

2./ Charges based on evidence, supra page 3.

3./ Charges based on evidence, supra page 24.

to a confession in court that the charges are true.[4/]

Furthermore, the evidence presented herein makes it clear as daylight why the Supreme Court is silent in the face of the charges. The evidence establishes, beyond the legal power of any federal judge to deny, that the charges are true. Thus, this ancient law of

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4./ Under "the tacit confession rule," McCormick on Evidence §§ 161, 270, failure to deny a charge is equivalent to a confession that the charge is true. 4 Wigmore, Evidence, §§ 1071-1072(Chadborn rev. 1972). "Underlying the rule is the assumption that human nature prompts an innocent man to deny false accusations and consequently a failure to deny a particular accusation tends to prove belief in the truth of the accusation." McCormick, supra, § 161. And the Supreme Court itself has consistently recognized this rule. "[T]he Court has consistently recognized that ... silence in the face of accusation is a relevent fact. .... Silence is often evidence of the most persuasive character." Baxter v Palmigiano, 425 U.S. 308, 319 (1976). And the rule is ancient. As Socrates cross-examined at his trial over 2000 years ago, "you are silent and have nothing to say. But is this not rather disgraceful, and a very considerable proof of what I was saying"? "I may assume that your silence gives consent." Apology in Plato 41,45(1942).

And concerning the Court's continuing silence year after year - "Silence gains more probative weight where it persists in the face of accusation, since it is assumed in such circumstances that the accused would be more likely than not to dispute an untrue accusation." United States v Hale, 422 U.S. 171, 176.

evidence, endorsed as an accurate indicator of truth by thousands of years of use, has special application in these circumstances. The charges are proved to be true, not only by the Court's silence year after year in the face of accusation, but also by the evidence, which independently proves the charges to be true.5/

5./ The Supreme Court has Hitler-like asserted to legalize killings defined as murder. This can not even be disputed, since it is mere historical fact. The only apparent defense is that- As Hitler was to Germany, so the Supreme Court is to America.

One of America's foremost constitutional scholars concluded "that the Justices are become a law unto themselves" and that their conduct "perilously resembles the subordination of 'law' to the attainment of ends desired by a ruling power which was the hallmark of Hitlerism." Berger, Government by Judiciary 408, 412 (Harvard University Press 1977).

The Weimar Constitution was patterned after ours. Hitler came to power within the terms of the Weimar Constitution. Thereafter he became "the supreme judge." United States v Altstoetter, supra, at 1011. Under the guise of interpretation, "the supreme judge" asserted to legalize killings which had been defined as criminal. The Nazi judges tried at Nuremberg claimed that they could not be held accountable for "murder" or "extermination" because they were "bound" by the "decrees" of "the supreme judge."

Will the U.S. Supreme Court now claim that it has the Hitler-like power to legalize mass murder?

Roe v Wade is another example to the world of how very powerful authorities, using pretense of law to clothe their criminal deeds, can overwhelm both the public mind, and the law of the land.

Moreover, under our government of laws, and not of men, judges are bound by a solemn legal duty which will not permit them to close their eyes and pretend that evidence does not exist. 6/ Thus, when judges of the

6./ Marbury v Madison, 1 Cranch 137. The judges can not substitute personal preferences for solemn laws derived from the consent of the governed. John Marshall held that for judges to swear to support the Constitution as the supreme law of the land, but then "close their eyes on the Constitution" and "condemn to death those victims whom the Constitution endeavors to preserve" is worse than "solemn mockery," it is a "crime." Id., at 179-180.

Judges have a legal duty to look at the evidence. A constitutional decision by the Supreme Court must be "always open to discussion when it is supposed to have been founded in error, and ... its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported." The Passenger Cases, 7 How. 282, 470 (1849).

Where there is an affirmative legal duty to act, the deliberate omission to do that duty, which results in death to others, can be prosecuted as homicide. Perkins, Criminal Law 602 (2d ed. 1969).

Albert Speer recognized this law when he became the only Nazi to plead guilty at Nuremberg. When he was warned of Auschwitz, Speer wrote that "I did not investigate- for I did not want to know what was happening there." "[F]rom fear of discovering something which might have made me turn from my course, I had closed my eyes." This "deliberate blindness" had made him guilty of complicity in extermination. Speer, Inside the Third Reich 376 (1970).

Thus, federal judges can be prosecuted if they close their eyes on the evidence, and permit victims to be executed, whom the law endeavors to preserve. This is a government of laws, and not of men.

United States are accused of mass murder, and the evidence is laid out in court, and pictures of the dead are shown to the judges, but year after year the judges do not deny the charges and prove them false, then not only an ancient law of evidence, but the solemn legal duty imposed by a government of laws, condemn this silence as equivalent to a confession that the charges are true.

The immediate practical result is that the U.S. Supreme Court has admitted that Roe v Wade is a mistake of law. By definition, the admission that Roe v Wade is a mistake of law is the legal equivalent of the express overruling of Roe v Wade. The legal status of Roe v Wade is just as if it had been expressly overruled, or never decided in the first place. It is no law at all.

And any judge of the United States, or any party, who chooses to close his eyes on these facts, unparalleled in the legal history of the world, and argues that the killings can

proceed without question, can be prosecuted for complicity in criminal extermination, including mass murder, just as if he had deliberately encouraged the killings after Roe v Wade was expressly overruled. 7/

7./ The Supreme Court asserted to legalize killings which were defined as criminal under positive criminal statutes, including murder statutes. If Roe v Wade were a mistake of law, then all the killings since 1973 can be criminally prosecuted. The ex post facto provisions of the U.S. Constitution do not apply to judicial decisions which are a mistake of law. Ross v Oregon, 227 U.S. 150 (1913). The general rule is that mistake of law is no excuse for breaking the law. Perkins, Criminal Law 920 (2d ed. 1969). The narrow exception of reasonable reliance on a court opinion thereafter determined to be a mistake of law does not apply to homicide cases. Model Penal Code, Tentative Draft No. 9, Comments § 2.04, page 138. In any event, "after a warning," such as given herein, a defendant can not claim that his reliance was reasonable. Id, at 138. And one can be criminally implicated in homicide by mere words of encouragement while the victims are being killed. Lafave and Scott, Criminal Law §§ 61, 64 (1972). And mistake of law is no excuse.

To illustrate the true status of Roe v Wade, suppose that a lawyer had accused "the supreme judge" of Nazi Germany of mass murder 50 times in court, but each time "the supreme judge" listened in silence and did not deny the charges and prove them false, and just continued the killings. Would such judicial conduct have warranted people in arguing that the killings could continue without question? The Nuremberg Court answered that question. Such argument is worse than mockery, or monstrous, it is an act of criminal extermination and murder.

Roe v Wade has been overruled. In the face of the facts, one must literally gamble life and liberty to support it. Mistake of law is no excuse for breaking the law. Many states still have the death penalty.

CONCLUSION

The Supreme Court has perpetrated one of the giant homicidal crimes in history on the United States. And the corruption of a judicial system for the accomplishment of criminal extermination involves an element of evil which is not found in frank atrocities which do not sully the judicial robes. The dagger of the assassin has been concealed beneath the robe of the jurist.

By its conduct, the U.S. Supreme Court has overruled Roe v Wade, 410 U.S. 113. Mere argument that the killings can continue can be criminally prosecuted. To save innocent lives from extermination, and uninformed persons from prosecution, the Supreme Court must expressly overrule Roe v Wade.

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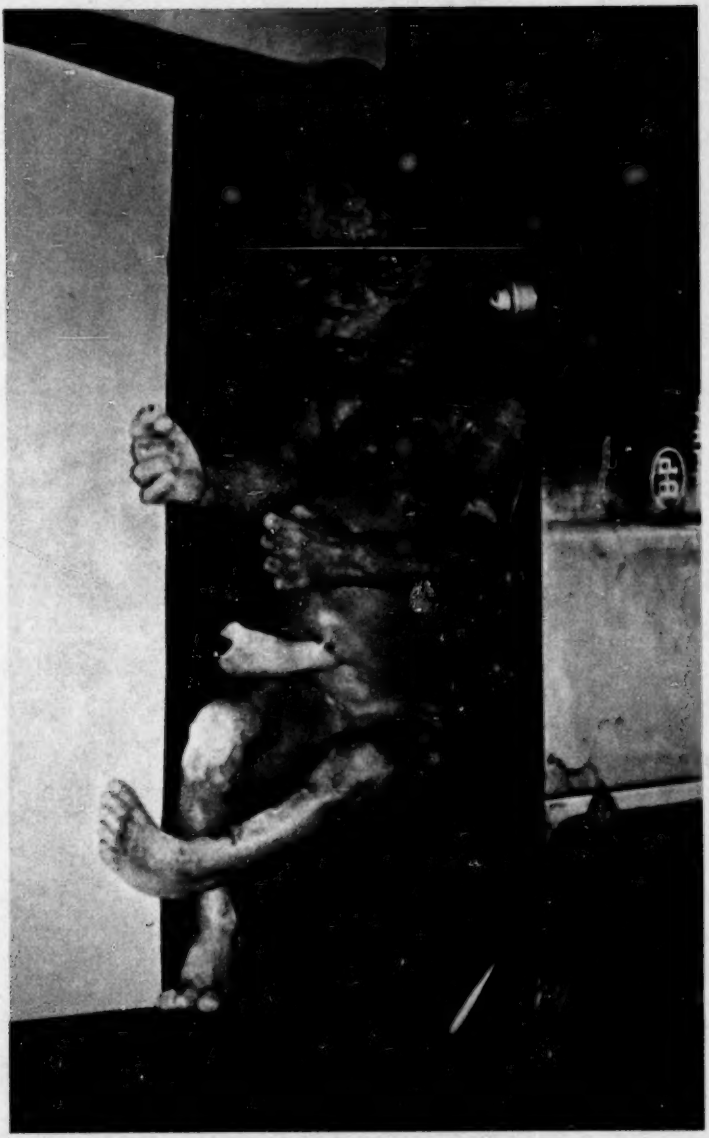
Alan Ernest
Counsel for Amicus



A-1

The photograph, supra A-1, shows a second stage abortion by prostaglandin. Such abortions not uncommonly result in the child being born alive.[1/] This Court could be prosecuted for murder for such a killing. There have been many thousands of such killings under Roe v Wade. And witnesses live to tell.

And if the child were killed in the womb and born dead, then this Court could be prosecuted for criminal extermination in violation of the Fifth and Fourteenth Amendments and 18 U.S.C. 242.[2/]

As the Court studies the face of this victim of Roe v Wade, let it contemplate that a government of laws shall be restored, and the law shall call the killers to account.

1./ Floyd v Anders, 440 F. Supp. 535,538(1977). The common second stage abortion techniques-hysterotomy, prostaglandin, and even salt poisoning-can result in the child being born alive. Jefferies & Edmonds, Abortion: The Dreaded Complication, The Philadelphia Inquirer, August 2, 1981.

2./ The amicus curiae brief by the Legal Defense Fund For Unborn Children shows that the unborn are persons whose lives are protected by the Fifth and Fourteenth Amendments of the U.S. Constitution.Thus their lives are also protected by 18 U.S.C. 242.